

Not designated for publication.

DIVISION IV

CACR06-1233

MAY 30, 2007

LARRY WYNE

APPELLANT

APPEAL FROM THE SALINE COUNTY
CIRCUIT COURT
[NO. CR-2002-530-3]

V.

HON. GRISHAM PHILLIPS,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Larry Wyne appeals his conviction by a Saline County jury for aggravated assault, for which he was sentenced to six years' probation, a \$5,000 fine, court costs, and anger management classes if recommended by his probation officer. On appeal, appellant argues that the circuit court erred in denying his motion for directed verdict, specifically that the State failed to prove that he engaged in conduct that manifested extreme indifference to the value of human life and created a substantial danger of death or serious physical injury to another person. We affirm.

On the evening of July 31, 2002, appellant and his female companion entered a Waffle House restaurant in Benton, Arkansas. He was admittedly rude, offensive, and inappropriate with respect to his comments toward the staff, supposedly for the poor service they were provided compared with the service that Caucasian patrons were receiving. Mr. James

Holmes, also a patron of the restaurant, attempted to speak with appellant about the situation, advising him to “be cool.” Appellant told Mr. Holmes to “get out of my face” and made a racially derogatory remark to him. Appellant then approached Mr. Holmes and reached for his pocket, at which time Mr. Holmes pushed him. The cook, Mr. Freddy Rodriguez, and another customer, Mr. Anthony Walker, came around the counter to assist, and Mr. Rodriguez was cut by the knife appellant was wielding.

A jury trial proceeded on April 5, 2006. At the close of the State’s case-in-chief, appellant’s counsel moved for a directed verdict, arguing that the State’s case was deficient because they failed to prove that appellant exhibited extreme indifference to human life and created a substantial danger of death or serious physical injury to another person, and that, at best, the State established misdemeanor assault. The motion was denied, and appellant’s attorney proceeded with his case. Following the completion of testimony, the circuit judge read the jury instructions, and both sides presented closing arguments. The circuit judge then provided the jurors with additional instructions regarding the selection of a foreman and verdict procedures. Not until that point did appellant’s counsel renew the motion for directed verdict; it was also denied. The jury convicted and sentenced appellant as previously set forth, as evidenced by the judgment and commitment order filed on April 28, 2006. Appellant filed a timely notice of appeal on May 18, 2006.

A motion for directed verdict is a challenge to the sufficiency of the evidence. *Saul v. State*, 92 Ark. App. 49, 211 S.W.3d 1 (2005). On appeal from a denial of a motion for

directed verdict, the sufficiency of the evidence is tested to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is that evidence which is of sufficient force and character to compel a conclusion one way or the other beyond suspicion or conjecture. *Hutcheson v. State*, 92 Ark. App. 307, 213 S.W.3d 25 (2005). This court considers only the evidence supporting the guilty verdict, and the evidence is viewed in the light most favorable to the State. *Id.*

A motion for directed verdict must be renewed at the close of all the evidence, *see* Ark. R. Crim. P. 33.1, and an attempt to renew the motion after the jury has been charged is not timely. *See, e.g., Ellis v. State*, 366 Ark. 46, ___ S.W.3d ___ (2006); *Robinson v. State*, 348 Ark. 280, 72 S.W.3d 827 (2002); *Rankin v. State*, 329 Ark. 379, 948 S.W.2d 397 (1997); *Webb v. State*, 326 Ark. 878, 935 S.W.2d 250 (1996); *Claiborne v. State*, 319 Ark. 602, 892 S.W.2d 511 (1995). According to our case law and court rules, appellant's renewed motion was untimely, and accordingly, we are precluded from reaching the merits of his sufficiency challenge. *See Ellis and Robinson, supra.*

Affirmed.

HART and ROBBINS, JJ., agree.